

Peat repeat: Appeals court to hear Lynnwood bog preservation fight

The state Court of Appeals has decided to consider a case involving the possible development at a rare sphagnum-moss bog in Snohomish County.

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Mark Harrison / The Seattle Times

Randy Whalen's property borders a rare sphagnum-moss bog at the headwaters of Bear Creek. His neighbor wants to develop five properties that border the bog, and an extended legal battle ensues while a variety of groups try to gain protection for the natural water filter for surrounding streams and lakes in north King and south Snohomish counties.

A rare sphagnum-moss bog in Snohomish County could be a bit closer to being preserved.

The Court of Appeals Division 1 decided this week to take on the issue because it appears that the trial-court judge erred when developers were given the OK to get a grading permit for a road through sensitive wetlands.

The road was the first step to building five luxury homes at the edge of Hooven Bog.

Attorneys for developers Rodney Loveless and Robert Dillon, Snohomish County and a private citizen, Randy Whalen, will get a chance to argue their positions before the Court of Appeals, probably in the fall. A decision will likely come several months later.

“We are really encouraged by this,” said Richard Aramburu, Whalen’s attorney. He said the decision quoted “our expert witness about how rare and endangered the bog is.”

“I’m happy they made the decision,” Whalen said. “I think it’s the right decision.”

Neither Loveless nor Dillon returned phone calls. They said earlier that they would sell the 30-acre site to a conservation group as long as their price — \$1.4 million — was met.

The case ultimately sets property-owner rights against environmental preservation.

In 2007 Snohomish County decided to make its Critical Areas Ordinance stricter, requiring 190-foot setbacks between water and a building, and 300 feet between water and septic systems. Just before the new ordinance was to go into effect, Loveless applied for building permits for five houses under the 2007 guidelines.

The permits expired but Snohomish County Planning Department allowed them to be renewed under the old, less restrictive guidelines.

In 2009, Loveless & Dillon built a road through the property without permits. That’s when Whalen, a neighbor who wants the bog preserved, protested. He took his complaint before Snohomish County Hearings Examiner Millie Judge — now a Superior Court judge. She sided with him, saying the newer guidelines should apply, making development of the property unlikely.

But the developers appealed to Snohomish County Superior Court, and Judge Eric Lucas found in their favor.

The county’s planning department didn’t wait to see if the Court of Appeals would take the case before giving Loveless & Dillon logging and grading permits. It was a move that infuriated a number of environmentalists who had begun to weigh in on the case.

Whalen and Snohomish County asked the Court of Appeals to take the case.

The Court of Appeals ruled that the trial court was wrong when it decided that Whalen had not exhausted all his possible appeals of the development and therefore had no standing to challenge the road-grading permit before the county hearings examiner, which then had no authority to require the more stringent standards.

Sphagnum moss, one of the unique aspects of the bog, acts as a super-sponge absorbing a lot of water and preventing downstream flooding, unless it’s compromised, environmental consultant Sarah Spear Cooke said. It’s especially important to the health of Bear Creek system.

Once there were many such bogs in the Northwest, including one on Mercer Island where the park-and-ride is now. Longtime residents recall filling baskets with peat to take home to their gardens.

Cooke says that Hooven is probably the last remaining bog of it's kind in the Everett to Olympia corridor.

More information about Hooven Bog is available at Bear Creek Headwaters,
<http://www.org/hooven-bog.html>www.bearcreekh

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